

EXHIBIT A

From: Michael Tan
Sent: Monday, July 23, 2018 4:54 PM
To: ICE-FOIA@dhs.gov
Cc: leeunice@uchastings.edu; Lisette Diaz
Subject: FOIA request

Dear Freedom of Information Act (“FOIA”) Officer,

Please see the attached FOIA Request, which I am submitting on behalf of the American Civil Liberties Union and the Center for Gender & Refugee Studies at the University of California Hastings School of Law.

Thank you,

Michael K.T. Tan
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American Civil Liberties Union
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July 23, 2018

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

**RE: FOIA Request for Records Related to Parole Decisions
For Arriving Aliens Found to Have a Credible Fear of
Persecution**

Dear Freedom of Information Officer:



National Office
125 Broad Street, 18th floor
New York NY 10004
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This letter is a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, by the Immigrants’ Rights Project of the American Civil Liberties Union (“ACLU”) and Center for Gender & Refugee Studies (“CGRS”) at the University of California Hastings School of Law. The ACLU and CGRS seek records from U.S. Immigration and Customs Enforcement (“ICE”) pertaining to parole decisions for arriving aliens found to have a credible fear of persecution. We also seek the expedited processing of this request and a fee waiver. *See* 5 U.S.C. §§ 552(a)(6)(E), 552(a)(4)(A)(iii).

Specifically, we seek the periodic reports of parole decisions created pursuant to ICE Directive 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009). ICE recently produced the same reports for the years 2010 to 2017 pursuant to a substantially similar FOIA request and subsequent settlement agreement in *ACLU v. ICE*, No. 3:16-cv-06066-JSC (N.D. Cal. Aug. 8, 2017) (ECF No. 56).

There is a compelling and urgent need to inform the public about parole decisions for asylum seekers. ICE Directive 11002.1 provides that “when an arriving alien found to have a credible fear establishes to the satisfaction of [ICE] his or her identity and that he or she presents neither a flight risk nor danger to the community, [ICE] should”—absent “exceptional, overriding factors”—“parole the alien on the basis that his or her continued detention is not in the public interest.” ICE Directive 11002.1, ¶¶ 6.2, 8.3. The Directive reflects the agency’s recognition that there is no public interest in detaining asylum seekers who present no danger or flight risk. The Directive was issued, in part, in response to widespread criticism that ICE was subjecting asylum seekers to arbitrary and unnecessary detention¹ and represents a

¹ *See, e.g.,* Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison* 6 (2009), available at

critical reform to the immigration detention system. Indeed, after the Parole Directive went into effect, large numbers of noncitizens who satisfied the Directive were granted parole.² In February 2017, the Secretary of Homeland Security stated that the Parole Directive “remain[s] in full force and effect” pending the DHS Secretary’s “further review and evaluation.”³

However, there is widespread evidence that, under the current Administration, ICE is no longer following the Parole Directive and has resumed the detention of asylum seekers who meet the Directive’s criteria. Indeed, in response to lawsuits by asylum seekers detained throughout the country, three federal district courts recently have found that ICE has *de facto* abandoned the Directive, despite it still being binding on the agency, and issued preliminary injunctions requiring ICE to follow the Directive when making parole decisions.⁴ In one case, government data of the kind sought here established that five ICE Field Offices in 2017 had abandoned the Directive in favor of a policy and practice of denying nearly all parole requests by asylum seekers.⁵

The records requested here will illuminate whether ICE continues to apply the Parole Directive in practice, or instead is subjecting asylum seekers who satisfy the Directive to arbitrary detention. Arbitrary detention raises serious human and civil rights concerns regarding the unlawful deprivation of individual liberty; the interference that such



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<https://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf>.

² See U.S. Comm’n on Religious Freedom, *Assessing the U.S. Government’s Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms* 9-10 (Apr. 2013) available at <http://www.uscirf.gov/sites/default/files/resources/ERS-detention%20reforms%20report%20April%202013.pdf>, (noting that, in FY2012, ICE granted parole to 80 percent of asylum seekers found to have a credible fear).

³ Memorandum from John Kelly, DHS Secretary, Implementing the President’s Border Security and Immigration Enforcement Improvement Policies, at 9-10 (Feb. 20, 2017),

https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.

⁴ See *Damus v. Nielsen*, No. 18-578 (JEB), 2018 WL 3232515 (D.D.C. July 2, 2018); *Abdi v. Duke*, 280 F. Supp. 3d 373 (W.D.N.Y. 2017); *Aracely, R. v. Nielsen*, No. CV 17-1976 (RC), 2018 WL 3243977 (D.D.C. July 3, 2018).

⁵ See *Damus*, 2018 WL 3232515 at *15 (“According to records obtained by the asylum-seekers, [D]uring the eight months from February to September 2017, ICE’s El Paso, Philadelphia, and Newark Field Offices denied 100% of parole applications. During that same period, the Los Angeles and Detroit Offices denied 92% and 98% of applications, respectively.” (internal quotation marks and citations omitted)).

detention has on the ability of individuals to litigate their asylum claims effectively;⁶ and the severe harm that such detention causes asylum seekers' mental health.⁷ For these reasons, the government's parole practices warrant prompt and immediate review.

RECORDS REQUESTED

The ACLU and CGRS seek the following reports created pursuant to the ICE Directive 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009), from January 2018 to the month when ICE provides its final response to this request:

- Monthly reports by the ICE Field Office Directors detailing the number of parole adjudications for each area of responsibility; the result of those adjudications; and the underlying basis to grant or deny parole. *See* ICE Directive 11002.1 ¶ 8.11.

THE REQUESTERS



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The **American Civil Liberties Union (“ACLU”)** is a nationwide, nonprofit, and nonpartisan organization dedicated to protecting civil rights and civil liberties in the United States. It is the largest civil liberties organization in the country, with offices in the fifty states, Puerto Rico, and Washington, D.C., and more than two million members. The ACLU is dedicated to holding the U.S. government accountable to principles of due process and the U.S. Constitution in general, including those principles that bear on detention and other significant deprivations of liberty.

The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are widely disseminated to the public. These materials are made available to everyone—including tax-exempt organizations, non-profit groups, and law students and law faculty—for either no cost or for a nominal fee. The ACLU also disseminates information through its high-traffic website, <http://www.aclu.org>, which provides in-depth information on a range of civil liberties issues, addresses civil liberties issues that are

⁶ *See, e.g.,* N.Y. Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings* 3 (2011) (reporting that between 2005 and 2010 in New York City immigration courts, non-detained immigrants with lawyers had successful outcomes 74 percent of the time, while detained immigrants without counsel prevailed only 3 percent of the time).

⁷ *See, e.g.,* Physicians for Human Rights & Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003); Allen Keller et al., *Mental Health of Detained Asylum Seekers*, 362 LANCET 1721 (2003); Ctr. for Victims of Torture et al., *Tortured & Detained: Survivor Stories of U.S. Immigration Detention* (2013).

currently in the news, and contains hundreds of documents relating to the ACLU's work. The website specifically features information obtained through FOIA.⁸ The ACLU also publishes an electronic newsletter, which is distributed to subscribers via email; airs regular podcasts; maintains several blogs at <https://www.aclu.org/blog>; and releases information via social media platforms such as Facebook and Twitter.



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The **Center for Gender & Refugee Studies (“CGRS”)** based at the University of California Hastings College of the Law works to protect the fundamental human rights of refugees, with a focus on women and children. CGRS engages in litigation, scholarship, research, and development of policy recommendations, in addition to providing in-depth training and technical assistance. Its attorneys are authors of scholarly works, experts who advise in asylum cases, and practicing attorneys who represent asylum seekers throughout the United States. CGRS is a nationally-recognized leader in dissemination of legal theories, practice advisories, and human rights reporting. CGRS conducts nation-wide trainings and webinars attended by hundreds of attorneys, and in the past year, it provided technical assistance in over 1,500 cases involving asylum and related relief. CGRS maintains a public website, <http://cgrs.uchastings.edu>, through which it distributes educational and informational materials free-of-charge. The Library of Congress recently selected CGRS's website for its Web Archive Project, recognizing CGRS's site as “an important part of [its public policy] collection and the historical record.”⁹

In addition, CGRS is an educational institution with core scholarly, pedagogical, and research objectives. CGRS and its staff have authored numerous scholarly articles and reports, and have published comprehensive studies documenting the treatment of women and child asylum seekers in the United States.¹⁰

⁸ See, e.g., <http://www.aclu.org/safefree/torture/torturefoia.html>; <https://www.aclu.org/patriot-foia>.

⁹ See University of Hastings College of the Law, CGRS Website To Be Included in Library of Congress Web Archive Project (Sept. 15, 2015), at <http://www.uchastings.edu/news/articles/2015/09/CGRS-LOC.php>.

¹⁰ See, e.g., Center for Gender & Refugee Studies and National University of Lanús, eds., *Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges* (2015), available at <http://cgrs.uchastings.edu/Childhood-Migration-HumanRights>; CGRS & Kids in Need of Defense, *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System* (2014), available at <http://cgrs.uchastings.edu/sites/default/files/Treacherous%20Journey%20Executive%20Summary.pdf>; Karen Musalo, *Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law*, HARVARD INT'L REV., Fall 2014/Winter 2015, at 45; Center for Gender & Refugee Studies, *Review of Gender, Child, and LGBTI Asylum Guidelines and Case Law in Foreign Jurisdiction: A resource for*



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Accordingly, the ACLU and CGRS are both organizations whose “main professional activity or occupation is information dissemination.” 6 C.F.R. § 5.5(d)(3). The ACLU and CGRS are also “representative[s] of the news media” within the meaning of the statute and applicable regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that “gathers information of potential interest to a segment of the public” and “uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience”); *see also National Sec. Archive v. Department of Defense*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); *Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (nonprofit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that nonprofit requestors who are not traditional news media outlets can qualify as representatives of the news media for the purposes of the FOIA, including after the 2007 amendments to the FOIA. *See ACLU of Washington v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a “representative of the news media”).

In addition, CGRS, based at the University of California Hastings College of the Law, qualifies as an educational institution and seeks requested information to further its scholarly aims. *See* 5 U.S.C. § 552(a)(4)(A) (stating that fees shall be limited for “an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research”); 6 C.F.R. § 5.11(b)(4) (defining “educational institution” as “an institution of professional education . . . that operates a program of scholarly research”).

EXPEDITED PROCESSING

The ACLU and CGRS request Track 1 expedited treatment for this FOIA request. This request qualifies for expedited treatment pursuant to 5 U.S.C. § 552(a)(6)(E). As set forth above, there is a “compelling need” for expedited processing of this request, *see* 5 U.S.C. §

U.S. Attorneys (2014); Blaine Bookey, *Domestic Violence as a Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012*, 24 HASTINGS WOMEN’S L.J. 107 (2013); Karen Musalo and Blaine Bookey, *Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala*, 10 HASTINGS RACE & POVERTY L.J. 265 (2013); Lisa Frydman and Neha Desai, *Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs*, 12–10 IMMIGR. BRIEFINGS (2012).

552(a)(6)(E)(i)(I), namely, an “urgency to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). The ACLU and CGRS are therefore entitled to expedited processing of this request.

FEE WAIVER

The ACLU and CGRS also seek a full fee waiver on the grounds that disclosure of the requested records is in the public interest and is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.” 5 U.S.C. § 552(a)(4)(A)(iii). As set forth above, this request aims at furthering public understanding of government conduct: i.e., how the government is making parole decisions for arriving aliens found to have a credible fear of persecution. To the Requestors’ knowledge, the information requested regarding such parole decisions is not currently available to the public. Thus, the records’ disclosure by definition will contribute significantly to the public’s understanding of how the government is deciding parole requests. Moreover, neither the ACLU nor CGRS have any commercial interest in the records’ disclosure. In this respect, the request strongly resembles the many previous instances in which the government waived all fees associated with responding to FOIA requests by the ACLU and CGRS.¹¹



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¹¹ For example, in September 2014, the DOJ Executive Office for Immigration Review granted CGRS a fee waiver on a request for documentation regarding cases of individuals detained at the T. Don Hutto Residential Center. In August 2014, the DOJ Executive Office for Immigration Review granted CGRS a fee waiver on a request for documentation concerning court handling of immigrant juvenile cases. In April 2013, the DOJ National Security Division granted an ACLU fee waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted an ACLU fee waiver request regarding a FOIA request for documents related to national security letters issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the DOJ granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU on a request regarding the use of

In any event, as discussed *supra*, the ACLU and CGRS are both “representative[s] of the news media” and do not seek the records requested for commercial use. Accordingly, should the government assess fees for the processing of this request, those fees should be “limited to reasonable standard charges for document duplication” alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your consideration of this request. If this request is denied in whole or in part, we ask that the government justify all redactions by reference to specific FOIA exemptions. We expect the government to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees. We look forward to your response to our request for expedited processing within 10 business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within 20 business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

Please respond to Michael Tan, Senior Staff Attorney, ACLU Immigrants’ Rights Project. Also, please notify us in advance if the cost of photocopying the documents requested exceeds \$100.00.

* * *

Under penalty of perjury, I certify, to the best of my knowledge and belief, that the above information is true and correct.



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immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations.



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